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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN - 8 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment to the Commission's ) IB Docket No. 95-41  
Regulatory Policies Governing )  
Domestic Fixed Satellites and )  
Separate International Satellite )  
Systems )

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**COMMENTS OF CHARTER COMMUNICATIONS INTERNATIONAL, INC.**

Charter Communications International, Inc. ("Charter") submits these comments generally in support of the Commission's proposals in its Notice of Proposed Rulemaking, released April 25, 1995 ("NPRM"). Charter agrees with the objectives of the NPRM to: (1) "remove artificial service limitations" on satellite systems (NPRM, ¶ 20); (2) "increase competition in fixed-satellite services by increasing the amount of satellite capacity available for both domestic and international use" (NPRM, ¶ 1); and (3) "eliminate regulations that impair businesses' ability to meet their customers' needs" (NPRM, ¶ 1). The NPRM, at ¶ 39, invites comments regarding "non-U.S. satellites." Accordingly, Charter will demonstrate in these comments that the objectives of the NPRM will be served by the extension of the FCC's procompetitive proposals to foreign regional satellite systems, including the Solidaridad system of Mexico, as well as to U.S. Separate Systems.<sup>1/</sup>

<sup>1/</sup> The FCC refers to non-Intelsat systems as "Separate Systems." There are two categories of Separate Systems involved in this proceeding: (1) satellites authorized for domestic and transborder services ("Domsats"); and (2) satellites authorized for international services only. The NPRM proposes to combine these two categories under a single, simplified regulatory regime.

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## **I. CHARTER'S INTEREST IN THIS PROCEEDING**

Charter is a newly certified international carrier with authority to provide switched and private line services via the Intelsat, PanAmSat, TDRSS, Orion, U.S. Domsats, Canadian ANIK and Mexican Solidaridad Satellite Systems. FCC Order, May 1, 1995, File No. ITC-95-160, DA 95-919. Although Charter's ANIK and Solidaridad authority is limited in that Order to Canada and Mexico, respectively, the Commission has granted Charter Special Temporary Authority ("STA") to use Solidaridad between the U.S. and Panama. STA, April 7, 1995, TAO-2515. Charter's application is pending insofar as it requests permanent authority to use Solidaridad between the U.S. and some 25 Latin American countries which can be served by Solidaridad.

Charter believes that a grant of its pending application for permanent Solidaridad authority to Latin American countries would be facilitated by Solidaridad's inclusion within the NPRM's procompetitive proposals and their adoption by the Commission. The Commission should "remove artificial service limitations" (NPRM, ¶ 20) on Solidaridad as well as on U.S. Separate Systems in order to achieve the NPRM's objectives, as quoted at the outset of these comments. This procompetitive result would enable Charter to market its services via Solidaridad, unhampered by the market-chilling effect of the need to seek and renew STAs. The public will benefit from this additional competition.

## **II. EXISTING TRANSBORDER POLICY DOES NOT DISTINGUISH BETWEEN U.S. DOMSATS AND CANADIAN/MEXICAN DOMSATS**

As explained in the NPRM at ¶¶ 4-9, the Buckley Letter formed the basis of the FCC's Transborder Policy of 1981.<sup>2/</sup> The Buckley Letter and the resulting FCC Transborder Policy did

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<sup>2/</sup> The Executive Branch's position, as set forth in the letter of James L. Buckley, then a State Department Official, is reprinted as Appendix A to Transborder Satellite Video Services, 88 F.C.C. 2d 258, 287 (1981).

not distinguish between U.S. Domsats, on the one hand, and Canadian and Mexican Domsats, on the other hand. Indeed, both the Buckley Letter and Transborder Satellite Video Services addressed the Canadian ANIK satellites as well as the U.S. Domsats.<sup>3/</sup> The Commission, in adopting its Transborder Policy, authorized "the use of [both] United States and Canadian domsat facilities" for U.S.-Canada transborder services Id., at 283.

There were no Mexican Domsats in 1981. However, when Mexico launched its domestic satellites, the FCC extended its Transborder Policy to those satellites in 1985. Equatorial Communications Services, File No. ITC-85-014, Mimeo 3643, April 8, 1985. The Mexican Morelos satellites were included in subsequent FCC transborder orders (e.g., Satellite Transmission And Reception Specialist Company, File No. 5004-DSE-ML-87, DA-87-1716, December 4, 1987) as well as the Mexican Solidaridad successor satellites (e.g., Satellite Round-table Initiatives Launched, News Report No. IN 95-8, March 13, 1995).

The operational efficiencies resulting from the use of domestic satellites for service to Latin American countries were the same for U.S. and Mexican Domsats. As noted in the NPRM, the use of Domsats rather than Intelsat for service to Western Hemisphere countries eliminated operational inefficiencies resulting from such factors as "multiple satellite hops," unnecessary "terrestrial facilities," and duplicative "co-located domestic and international earth stations." NPRM, ¶ 5.

Similar operational efficiencies made possible by Solidaridad for U.S.-Panama services warranted the Commission's grant of Charter's aforementioned STA:

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<sup>3/</sup> Transborder Satellite Video Services, *supra*, 88 F.C.C. 2d at 261-63, 283, 286, 289.

"In support [of Charter's STA request], you state that Charter's Panama correspondent has a satellite earth station on the roof of its Panama City operating center that is equipped to operate with Solidaridad. You state that the existing Panama-U.S. satellite path via INTELSAT requires the routing of communications via a microwave system to the Panama INTELSAT earth station distant from the operating center. The microwave system is subject to interruptions. Therefore, you state the Panama correspondent urgently requires diversity of routing for its Panama-U.S. telecommunications traffic.

"Under these circumstances, we find that a grant of Special Temporary Authority would serve the public interest, convenience and necessity. We believe that Charter's immediate need for diversity of routing for its Panama-U.S. telecommunications traffic warrants this grant." (TAO-2515, supra.)

There are many operational benefits to the public resulting from the unrestricted use of both U.S. and Mexican Domsats for services between the U.S. and Latin American countries. For example, there have been shortages of Intelsat satellite capacity and shortages of available Intelsat earth station capacity in individual Latin American countries. Thus, artificial restrictions on the use of these Domsats, including Solidaridad, disserve the public interest.

### III. ELIMINATION OF TRANSBORDER POLICY RESTRICTIONS IS WARRANTED FOR SOLIDARIDAD AS WELL AS U.S. DOMSATS

Charter supports the FCC's proposal "to eliminate the Transborder Policy in its entirety, including the Buckley Letter criteria." NPRM, ¶ 17. In the interests of logic and consistency, this elimination of "artificial service limitations on domsats" (NPRM, ¶ 20) should extend to the Domsats of both the U.S. and Mexico. As explained above, the Transborder Policy and Buckley Letter did not distinguish between Domsats, be they U.S., Mexican or Canadian. Accordingly, the limitations should be cleared away for all Domsats, including Solidaridad. By citing the Jamaica Teleport case (NPRM, ¶ 7), the Commission has demonstrated that the Buckley Letter criteria creates "uncertainty" as to the showing required by Domsats in order to be able to

provide transborder services to "non-contiguous locations" in Latin America. Regulatory uncertainty as to a carrier's legal authority to serve its customers, as Charter has experienced, chills competition and inhibits a carrier's marketing endeavors.

A. U.S. Carriers Should Have Access  
To Both U.S. And Foreign Domsats

U.S. carriers, including Charter, should have access to the best available transmission facilities with due regard to operational efficiencies and economies for the benefit of the public. The Commission does not limit U.S. carriers to U.S.-owned international facilities. The nationality of the facility ownership is irrelevant. Indeed, the predominant international satellite system -- Intelsat -- is approximately 75 percent foreign owned. Undersea cables are usually owned by a consortium of U.S. and foreign carriers. The Commission routinely authorizes U.S. carriers to obtain capacity in foreign wholly-owned facilities, both terrestrial and spatial, to extend service to international points.

The inclusion of Solidaridad within the procompetitive NPRM proposals will not implicate Section 310's foreign ownership limitations because the FCC will be licensing U.S. carriers' usage of Solidaridad -- not Solidaridad itself. Moreover, there is no public or FCC policy disfavoring foreign ownership interests in transmission facilities, even FCC-licensed satellite systems.<sup>4/</sup> Indeed, Section 310(b)'s foreign ownership limitations applicable to common carrier radio licenses might not even apply to FCC-licensed satellite systems which elect to operate on a non-common carrier basis as contemplated by the NPRM at ¶¶ 25, 33.

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<sup>4/</sup> STARSYS Global Positioning, Inc., File No. 16-DSS-MISC-94, DA 95-1205, June 1, 1995 (interpretation of Section 310(a)'s limitation on licensing of any foreign government).

**B. Unrestricted Access To Solidaridad By  
U.S. Carriers Would Be Consistent With  
National Policy Including NAFTA And GII**

Unrestricted access to Solidaridad by U.S. carriers would be consistent with the spirit of the North American Free Trade Agreement ("NAFTA"). The Preamble to NAFTA states that the Governments of the U.S., Canada and Mexico have resolved to "ENSURE a predictable commercial framework for business planning and investment." One of the "Objectives" of NAFTA is to "eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties." Article 102(1)(a).

Vice President Gore's advocacy of the Global Information Infrastructure ("GII") was quoted by Chairman Hundt:

"Satellites are a critical part of the information highways that, in the words of Vice-President Gore, 'will allow us to share information, to connect, and to communicate as a global community. From these connections we will derive robust and sustainable economic progress, strong democracies, better solutions to global and local environmental challenges, improved healthcare, and - ultimately - a greater sense of shared stewardship of our small planet.' I believe that these connections will be fostered through a competitive and innovative satellite telecommunications industry, with the U.S. continuing to play a leading role." Testimony of Chairman Hundt before the House Subcommittee on Telecommunications on the Global Information Infrastructure and the Role of Satellites, July 28, 1994.

These lofty national objectives, as articulated by the Vice President and the FCC Chairman will be served by the adoption of the NPRM's forward-looking proposals, including their application to Solidaridad. The inclusion of Solidaridad will further the NPRM's objectives of:

"Permitting all operators to provide the widest range of service offerings technically feasible and consulted by Intelsat will permit them to use their satellites more efficiently and to provide innovative and customer-tailored services. This should, in turn, benefit consumers by increasing service options, lowering prices, and facilitating the creation of a global information infrastructure. It will also help to avoid shortages of space segment capacity in the event of a launch failure or other catastrophic event." NPRM, ¶ 21.

C. Implementation of NPRM  
With Respect To Solidaridad

1. International Services To Contiguous and Non-Contiguous Locations. Solidaridad should be treated exactly as the U.S. Domsats with respect to the elimination of the Buckley Letter criteria permitting unfettered access by U.S. carriers for service to all Latin American countries that can be served by Solidaridad.

2. Intra-U.S. Services. U.S. Separate Systems should be able to hold their own in the competitive marketplace. Therefore, they need no regulatory protectionism, such as restrictions upon the usage of Solidaridad within the U.S. However, since domestic services have been deregulated, the Commission may wish to impose some reporting requirements on U.S. carriers who use foreign-owned satellites for intra-U.S. services so that the FCC can be informed of such usage. Charter would expect to use Solidaridad primarily for international services, with only ancillary usage within the U.S. For example, Charter might wish to transmit from its U.S. Solidaridad earth station to another operator of a U.S. Solidaridad station for onward transmission to a Latin American country in the event that Charter's correspondent station in that country has been interrupted. The Commission has experience and precedent regarding the usage of Separate Systems on "an ancillary basis," as illustrated in footnote 20 of the NPRM. If the Commission were more comfortable initially in applying the "ancillary" criterion to intra-U.S. usage of Solidaridad, that approach could be adopted.

3. Earth Station Licensing. The NPRM proposes to retain the "ALSAT" designation to include all satellites rather than require the licensee to request an amended authorization each time an additional satellite connection is added. NPRM, ¶ 36. This forward-looking proposal would eliminate the unnecessary paperwork burden as both domestic and international Separate

Systems are consolidated under a simplified regulatory regime. Likewise, earth station licensees should be permitted to add Solidaridad to their portfolio of satellite connections without the need for unnecessary regulatory paperwork.

#### IV. CONCLUSION

The Commission is respectfully requested to adopt its procompetitive proposals for fixed-satellite services, but most importantly, to include the Solidaridad system with the scope of these proposals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. Conn", written over a horizontal line.

Robert E. Conn  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037  
202/663-8093

Attorney for Charter

June 8, 1995

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